United Nations A/HRC/37/46

General Assembly

Distr.: General
21 February 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February – 23 March 2018
Agenda items 2 and 10
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, in the United Nations High Commissioner for Human Rights describes the situation of human rights in Libya and the support provided to key Libyan institutions with regard to the protection of civilians, individuals hors de combat and groups in focus, and concerning the administration of justice, the rule of law and transitional justice. He concludes the report with recommendations addressed to all parties to the conflict, the Government of Libya, the international community and the Human Rights Council.

* The present report was submitted late owing to a technical error in the submission process.

GE.18-02666(E)

1802666

Please recycle

I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to Council resolution 34/38, in which it requested the United Nations High Commissioner for Human Rights to present to the Council a report on the effectiveness of technical assistance received by the Government of Libya to improve the situation of human rights. It covers the period from 1 January to 31 December 2017.

2. The report was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the human rights mandate of UNSMIL. The Director of the UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner in Libya.

II. Context

3. The Presidency Council, which was established on 17 December 2015 under the Libyan Political Agreement, continues to struggle to assert its control over the country. Powerful armed groups and other Libyan actors remained opposed to the Agreement. The House of Representatives has yet to endorse the Government of National Accord proposed by the Presidency Council in 2016. On 20 September, the Special Representative of the Secretary-General for Libya announced a plan of action that had been adopted by the Security Council, aimed at ending the political stalemate. The plan proposed limited amendments to the Agreement, a national referendum on the Constitution, and parliamentary and presidential elections by September 2018. The United Nations facilitated two rounds of meetings of a joint drafting committee of the House of Representatives and the High Council of State on amendments to the Agreement. As at the end of 2017, no agreement had been reached.

4. On 29 July, the elected Constitution Drafting Assembly voted and approved the draft constitution, which is expected to be put to a popular referendum for adoption. The vote was challenged on procedural grounds in the Administrative Court of Al-Bayda, which on 16 August issued a provisory decision to suspend the referral of the draft to the legislature.

5. By May 2017, the Presidency Council had made significant territorial and political gains against the defunct "Government of National Salvation"[1] and affiliated armed groups, and had consolidated its control over the capital, Tripoli, with support from powerful Tripoli-based armed groups. By mid-November, armed groups allied to the Presidency Council had taken control of Wershefana, a strategic location south of Tripoli. Despite the consolidation of the Presidency Council, armed groups across the country remained the most powerful actors on the ground, contributing to persistent insecurity and abuses of human rights. In the light of the legislative vacuum, a caretaker government headed by Prime Minister Fayez Serraj has been performing ministerial functions, but has been struggling to meet the needs of the population. The economic situation and the provision of public services deteriorated further, leading to frequent power cuts, liquidity shortages and the devaluation of the Libyan currency. Common crimes and acts of political violence continued unabated.

[1] The "Government of National Salvation" controlled Tripoli before the relocation of the Presidency Council in April 2016. Up until May 2017, it retained control of several strategic areas of Tripoli.

6. The Libyan National Army consolidated its control over most of eastern Libya, with the exception of the city of Derna.[2] By November, following protracted fighting in Benghazi that had broken out in mid-2014, the Libyan National Army overran areas previously controlled by the Benghazi Revolutionaries Shura Council and its allies. Throughout 2017, the Libyan National Army also increased its presence in southern Libya, including in the Sharara oil fields.

7. Since December 2016, groups pledging allegiance to the so-called Islamic State in Iraq and the Levant (ISIL) no longer control any territory in Libya, but have remained active, particularly south and south-west of Sirte, and carried out several deadly attacks. On 4 October, ISIL claimed responsibility for a complex attack on the Misrata court complex, involving the use of explosives and direct gunfire, which left four men dead (in addition to the three perpetrators) and another 41 injured.

8. Hundreds of armed groups continued to operate throughout Libya, many nominally affiliated with the ministries of Defence, the Interior and Justice. While receiving salaries from central State funds, they were not under its effective command and control. They controlled borders, strategic installations and localized areas, including detention centres holding thousands of people. Action to remove law enforcement powers from armed groups, as foreseen in the Libyan Political Agreement, and demobilization, disarmament and reintegration, had not yet been taken.

9. OHCHR, through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, continued to monitor and report on the situation of human rights in Libya, including through increased field visits, particularly to the capital. UNSMIL/OHCHR engaged in regular dialogue with the authorities, armed groups, civil society and other stakeholders in Libya. The impact and effectiveness of technical assistance remained limited owing to restricted access to parts of Libya, political divisions and prevailing impunity, which all created an environment of intimidation and fear, and inhibited interlocutors, including officials, civil society and survivors of violations and abuses, from sharing information and engaging on human rights issues.

10. On 10 October, the United Nations High Commissioner for Human Rights visited Tripoli, where he held discussions with government officials, including the Prime Minister, the Minister of Justice and Minister of the Interior, and the head of the Department for Combating Illegal Migration. He visited a prison and a camp for Tawerghans displaced since the 2011 conflict. He also engaged in a dialogue with members of Libyan civil society and women human rights defenders. During his visit, the High Commissioner raised particular concerns with regard to prolonged arbitrary detention and the situation of migrants, internally displaced persons and human rights defenders. Libyan officials reiterated their commitment to respecting human rights and to working with the United Nations and other stakeholders towards the implementation of human rights law and standards.

11. Libya is a State party to seven United Nations core human rights treaties, namely, the International Covenant on Civil and Political Rights and the first Optional Protocol thereto, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention

[2] Derna remained under the control of the Derna Mujahedeen Shura Council, a coalition of Islamist-leaning armed groups, who ousted the so-called Islamic State from the city in 2015.

on the Rights of the Child and two of the Optional Protocols thereto. It is also a party to the African Charter on Human and Peoples' Rights.

12 Libya has obligations to respect, protect, promote and fulfil the human rights of all persons within its territory and of those subject to its jurisdiction, without discrimination. It also has the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including by providing reparations and guarantees of non-repetition, and to investigate and bring to justice those responsible.

13. International humanitarian law also applies to the non-international armed conflict that continues in Libya. The State is a party to the four Geneva Conventions and Additional Protocols I and II. Of particular relevance are common article 3 to the Geneva Conventions and Additional Protocol II, which contain protections applicable to civilians and other persons not taking a direct part in hostilities, as well as applicable norms of customary international humanitarian law.

III. Protection of civilians and of individuals hors de combat

A. Indiscriminate attacks and other violations of international humanitarian law

14. Under the Libyan Political Agreement, all armed factions committed to complying with Libyan legislation and international humanitarian and human rights law. Crimes under international law may also be prosecuted by the International Criminal Court, following referral of Libya to the Court by the Security Council in resolution 1970 (2011), pursuant to article 13(b) of the Court's statute.

15. Information obtained by UNSMIL/OHCHR shows that, throughout 2017, armed groups and other actors continued to carry out indiscriminate attacks, often in civilian and residential areas, heedless of their impact on civilians or civilian objects. Such attacks included the use of mortars, artillery, Grad rockets, mines, booby traps and improvised explosive devices. Such attacks, resulting in civilian casualties, were conducted across Libya, including in Al-Zawiya, Benghazi, Derna, Tripoli and Sabratha.

16. From 1 January to 31 December, UNSMIL/OHCHR documented 371 civilian casualties: 161 killed (104 men, 18 women, 37 children, and two individuals whose sex and/or age could not be determined) and 210 injured (124 men, 26 women, 39 children, and 21 individuals whose sex and/or age could not be determined). The largest number of civilian casualties was recorded in Benghazi. The leading causes of death were indiscriminate use of gunfire, explosive remnants of war, airstrikes, shelling and improvised explosive devices.

17. Incidents documented by UNSMIL/OHCHR included attacks on recreational areas, camps for internally displaced persons, detention facilities and private farms. For example, on 17 April, the Al-Kani armed group opened fire on a family home in the city of Tarhouna, leading to the death of a paralysed elderly man and nine other men, and the injury of two men and a 14-year-old boy. On 19 May, two men and three boys were killed and 20 boys and men were injured in the city of Salouq in a vehicle-borne improvised expolosive device attack in front of a mosque. On 4 July, two women and three children were killed, and three women and three children were injured when a Tripoli beach was shelled. From 17 September to 6 October, armed clashes in the city of Sabratha led to the death of least four civilian men and one woman, while six civilian men, two women and four children were injured. On 30 October, unidentified aircraft carried out airstrikes that

hit a farm in Derna, killing three women and nine children, and injuring two women, a man and five children.

18. Hospitals and other civilian objects were also attacked. From 1 January to 31 December, UNSMIL/OHCHR documented 16 attacks on medical facilities; they included airstrikes carried out on 4 March on the Ras Lanouf Medical Centre (leading to the death of two male ambulance drivers and of a man accompanying a patient), and the shelling of the Benghazi diabetics clinic in July, and of the Safaa Hospital in Tripoli, in May. In April and June, the Al-Zawiya hospital was closed three times owing to clashes in the vicinity. Other attacks on hospitals were recorded in Obari, Sabha, Sabratha and Sirte. UNSMIL/OHCHR also documented physical assaults by members of armed groups against medical personnel during the performance of their professional duties, including in Tripoli and Benghazi.

19. By late March, the Libyan National Army, following fierce fighting, took full control of the Ganfouda neighbourhood of Benghazi from the Benghazi Revolutionaries Shura Council. Civilians had been besieged for months in a small area of Ganfouda, subjected to airstrikes and a shortage of food, water and medical supplies. On 18 March, Libyan National Army forces opened fire on individuals fleeing Ganfouda, killing at least seven civilians, including two children, and injuring a woman. In March, videos and photographs posted online depicted the Libyan National Army and its allies displaying mutilated bodies of Benghazi Revolutionaries Shura Council fighters. On 20 March, the General Commander of the Libyan National Army reiterated its commitment to adhere to applicable national and international law, and to bring those responsible for violations to justice. As at the end of 2017, no information on the progress of investigations or prosecutions had been shared with UNSMIL/OHCHR.

20. Following the killing of a Libyan National Army pilot captured in Derna on 29 July, the Libyan National Army tightened restrictions on the freedom of movement of civilians and on the entry of fuel and humanitarian assistance to the city.

21. The Tawerghan community, scattered in camps for internally displaced persons and host communities across the country since the armed conflict in 2011, was subjected to attacks by armed groups, including armed incursions into the Tarik al-Matar camp, in July, and the Sidi al-Saeh camp, in October, both resulting in civilian casualties. Throughout 2017, the Sbortowat and Omar Tantoush armed groups intimidated, attacked and deprived displaced Tawerghans, who had been sheltering at the Naval Academy in western Tripoli, of their liberty.

B. Violations of the right to life, including unlawful killings

22. In 2017, UNSMIL/OHCHR received numerous reports alleging that armed groups, including those operating nominally under State institutions, were responsible for summary executions and other unlawful killings of civilians and captured fighters.

23. On 18 May, the Misratan Third Force, backed by the Benghazi Defence Brigade and other allies, attacked the Brak al-Shati airbase, at the time controlled by the Libyan National Army. In the aftermath of the attack, bodies were reportedly brought to a local hospital with bound hands and single gunshot wounds to the head; reportedly, most were wearing military uniforms. At least six civilians were also shot dead at or near the Brak al-Shati base in the same incident. The Presidency Council condemned the attack and opened an investigation; no results had been made public as at the end of 2017.

24. On 26 May, a Tripoli hospital received the bodies of six guards from the Al-Hadba Correction and Rehabilitation Institution; five bore single gunshot wounds to the back of the head. Some hours earlier, an armed group, the Tripoli Revolutionaries Brigade, allied to

the Government, had gained control of the facility, previously headed by Khaled al-Sherif, a former member of the Libyan Islamic Fighting Group.

25. On 26 October, the bodies of 36 men were found in Al-Abyar, some 60 km north-east of Benghazi, an area under the control of the Libyan National Army. Several bore gunshot wounds and signs of torture and had their hands tied. Relatives were reportedly threatened in person by unidentified armed men or via telephone not to hold public burial ceremonies. Armed masked men had reportedly seized several victims from their Benghazi homes days or months before their bodies were recovered. On 28 October, the General Commander of the Libyan National Army ordered the General Military Prosecutor in the east to investigate the incident.

26. Between 7 August and 24 October, at least eight bodies were recovered in al-Zeit street, in the Shibna neighbourhood, Benghazi, bearing gunshot wounds and marks of torture. Armed men had reportedly seized the victims between April and July from Benghazi and Ajdabiya neighbourhoods under the control of the Libyan National Army and its allies. One victim had appeared in a video following his capture "confessing" to carrying out terrorist attacks and confirming his apprehension by the Department of Combating Terrorism, an armed group affiliated to the Libyan National Army.

27. In 2017, at least seven videos emerged on social media depicting Libyan National Army forces carrying out apparent summary executions of suspected Benghazi Revolutionaries Shura Council fighters and other opponents. In at least five videos, a field commander with the Special Forces in Benghazi, Mahmoud Al-Werfalli, was seen to be either directly carrying out the executions or giving orders to that effect. On 18 July, the OHCHR called upon the Libyan National Army to investigate the allegations and to suspend Mahmoud Al-Werfalli from his duties pending the conclusion of investigations.

28. In another case in Benghazi, armed men reportedly aligned with Faraj Qaim, the government-appointed Deputy Minister of the Interior, seized a 21-year-old student on 17 July. Two days later, local police found the student's body dumped on the street.

29. Assassinations were also reported. For instance, on 29 September, four men were shot dead by unknown assailants near Mizdah in the Nafusa mountains. The victims had reportedly been helping to mediate between the Zintan and Mashashia communities in a dispute ongoing since the 2011 armed conflict.

30. UNSMIL/OHCHR received information on kidnappings and killings by armed groups and criminal gangs. On 20 May, a man's body bearing a gunshot wound was brought to a Tripoli hospital. His hands and legs had been bound with metal chains. The man had reportedly been abducted some 40 days earlier by armed men in Wershefana.

Support

31. UNSMIL/OHCHR regularly supported victims and their families, provided advice and advocated for remedies with government officials and armed groups at all levels. UNSMIL issued regular monthly reports on civilian casualties and unlawful killings in Libya. It also supported civil society when working on protection cases, through direct cooperation and capacity-building, and held regular briefings with the international community.

32. UNSMIL/OHCHR regularly received requests for medical care and mental health support for victims of human rights violations and abuses and violations of international humanitarian law, and referred individual cases of concern, where possible, to appropriate organizations. In November, UNSMIL received OHCHR funding for a project managed by Tunisian non-governmental organizations for the provision of mental health support and direct assistance to Libyan survivors of torture and violence. Implementation of the project commenced in late December 2017.

IV. Groups in focus

A. Women

33. Despite the State's obligations to prohibit discrimination on the basis of sex under international law, women and girls continued to suffer from discrimination both in law and in practice. Women continued to be denied the right to pass their nationality on to their spouse or children. Despite efforts by civil society groups and women's rights defenders, the draft constitution adopted by the Constitution Drafting Assembly on 29 July failed to eliminate this discrimination. Armed groups in control of land borders and airports subjected Libyan women to travel restrictions and intimidation, requiring them to travel with a male "guardian". In February, the Chief of Staff of the Libyan National Army issued a decree prohibiting women under the age of 60 from travelling abroad without a male "guardian". Following a public outcry and advocacy by women's rights activists, the decree was withdrawn. In 2017, UNSMIL/OHCHR received reports of intimidation, including social media attacks, against women activists in Libya and others living abroad. The control exercised by armed groups and the general climate of lawlessness disproportionally affected women, restricting their freedom of movement and participation in the public sphere.

34. Some women were arbitrarily detained, often because of family affiliations or for prisoner exchanges, and were held in facilities without female guards, exposed to the risk of sexual abuse. Eight women and five girls taken by the Libyan National Army following their escape from Ganfouda between 18 and 20 March were released in two groups, on 29 March and 20 April 2017, in prisoner exchanges for Libyan National Army fighters taken by the Benghazi Defence Brigades during fighting in the Oil Crescent in March 2017. UNSMIL/OHCHR documented allegations of torture and ill-treatment of women detainees, including beatings, whipping, hair pulling, insults and threats of a sexual nature, at the Mitiga detention facility under the Special Deterrence Force, the Central Security/Abu Salim detention facility and other places of detention nominally under the control of the Ministry of the Interior.

35. Migrant women and girls were raped and otherwise sexually abused during their journeys through Libya, in both official and unofficial migrant detention centres. Survivors described being taken away from cells shared with others by armed men, including guards of the Department for Combating Illegal Migration, and being raped repeatedly by multiple perpetrators. Those who tried to resist were beaten, threatened at gunpoint, and denied food and water.

36. Women and girls accused of engaging in sexual relations outside of marriage, which is criminalized in Libya, were subjected to invasive "virginity tests" by judicial order, regardless of their consent.

B. Children

37. As reported above (see para. 16), 37 children were killed and 39 injured during hostilities apparently as a result of the indiscriminate use of weapons in residential areas by all parties to the conflict, including in crossfire and from explosive remnants of war.

38. UNSMIL/OHCHR also received reports of the unlawful deprivation of liberty of children. For example, on 7 September, six relatives of a former military commander in Ajdabiya, including three boys younger than 3 years of age, were arrested near their apartment by members of the Special Deterrence Force. The children were released after 10

days in detention at the Mitiga detention facility. During their first days in custody, they were denied sufficient food and diapers. Moreover, four children of the Shershari family, who were abducted on 2 December 2015 by unknown assailants in Surman, remained missing.

39. Children were detained together with adults in official prisons and facilities controlled by armed groups. UNSMIL/OHCHR documented cases of children subjected to torture and ill-treatment. For instance, former detainees from the fighting in the Oil Crescent (see para. 34 above) recounted to UNSMIL/OHCHR how in March 2017 armed men affiliated to the Libyan National Army had beaten a 17-year-old detainee until he lost consciousness.

40. As at the end of 2017, 24 unaccompanied children from Tunisia, Egypt and other African countries remained at the Libyan Red Crescent shelter in Misrata following their transfer from Sirte in late 2016, in the context of military operations against ISIL They had insufficient access to humanitarian assistance, education and psychological support.

C. Migrants

41. While Libya is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, its legislation and practice contravene international and regional law and standards applicable to migrants,[3] including refugees and asylum seekers. Libya criminalizes irregular migration and has no asylum determination system.

42. UNSMIL/OHCHR found that migrants in Libya face gross human rights violations and abuses, both in and outside detention.[4] Perpetrators include State officials, armed groups, smugglers, traffickers and other criminal gangs. State institutions remain weak and, in some instances, the authorities were unable or unwilling to ensure effective protection for migrants.

43. Migrants faced arbitrary detention in inhuman conditions and continued to be subjected to torture, including rape and other forms of sexual violence, abduction for ransom, extortion, forced labour, forced prostitution, and unlawful killings. Those held in official detention centres run by the Department for Combating Illegal Migration under the Ministry of the Interior were held indefinitely, with no judicial process. UNSMIL/OHCHR gathered information on unlawful killings, rape, torture and other extreme violence in unofficial detention places run by armed groups, smugglers and traffickers in Beni Walid, Sabratha and Sabha. Sub-Saharan Africans were especially vulnerable to abuse as a result of racial discrimination. Rape and other forms of sexual violence against women and girls were widespread.

44. In 2017, UNSMIL/OHCHR visited nine detention centres managed by the Department for Combating Illegal Migration, in Tripoli, Gharyan, Misrata and Surman, and observed inhuman conditions. Detainees were often crammed into hangars with appalling sanitary conditions, little space to lie down, and no or extremely limited access to light,

[3] OHCHR defines an international migrant as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence". See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2014, p. 4.

[4] See UNSMIL/OHCHR, "Detained and dehumanised", report on human rights abuses against migrants in Libya, 13 December 2016.

ventilation or appropriate hygiene facilities. Most were denied outdoor time and were not provided with any means to communicate with their families. UNSMIL/OHCHR also received numerous and consistent reports of torture, including beatings, electric shocks and sexual violence, and of forced labour of detainees. At 31 October, nearly 20,000 migrants were detained in facilities run by the Department for Combating Illegal Migration in western Libya. The number of detainees spiked after the authorities arrested thousands of migrants following armed clashes in the city of Sabratha, a smuggling and trafficking hub, in October. By the end of the year, following the repatriation of thousands of migrants to their home countries, an estimated 5,200 migrants were still being held in centres run by the Department of Combating Illegal Migration.

45. UNSMIL/OHCHR received reports of the bodies of hundreds of migrants being washed up on Libyan shores, found in remote areas (such as forests or deserts) or brought to morgues. Some appeared to have died from drowning or thirst; others bore gunshot wounds. On 7 March, the bodies of at least 13 sub-Saharan Africans were uncovered in the Telil forest, near Sabratha, some bearing gunshot wounds. On 4 June, seven sub-Saharan African migrants suffocated inside a truck after they had been locked in and abandoned by smugglers in the area of Garabulli. Officials from the Ministry of the Interior uncovered the truck with deflated tyres, but apparently did not open the doors until hours later, after it had been towed to Tripoli.

46. UNSMIL/OHCHR documented the use of firearms, physical violence and threatening language by coastguard officials during search-and-rescue operations in Libyan and international waters. For instance, on 10 May, a Libyan Coast Guard patrol boat intervened in an ongoing rescue operation of some 500 people in a wooden vessel run by the German non-governmental organization Sea-Watch, some 20 nautical miles from Libyan shores. According to testimonies by the rescue crew and survivors, members of the Coast Guard pointed their firearms at the migrants, threatened them, and rammed into their wooden boat twice. Survivors were taken to centres run by the Department for Combating Illegal Migration, where some were subjected to torture or ill-treatment. In a similar incident, on 6 November, some 28 nautical miles from Libyan shores, members of the Libyan Coast Guard reportedly beat migrants with a rope as they boarded, threatened Sea-Watch rescuers and instructed them to leave the location. The Coast Guard reportedly engaged in reckless behaviour during search-and-rescue operations and did not provide life jackets, further endangering the lives of people in distress at sea.

D. Media professionals, activists and human rights defenders

47. Media professionals, activists and human rights defenders had their rights to freedom of expression and association restricted and were subjected to abductions, arbitrary detention, intimidation and threats. Armed groups, including those nominally affiliated to State institutions, were the main perpetrators of such acts, with weak State institutions unable or, at times, unwilling to provide effective protection.

48. Activists and journalists who criticized armed groups, or who reported on human rights issues, were threatened and attacked. In July, a journalist fled Al-Zawiya following death threats by members of local armed groups, reportedly because of his coverage of political and humanitarian developments in the city. In August, armed men apprehended a human rights defender in Tripoli after they discovered his field of work; he was forced to unlock his computer and was questioned on his activities before being released hours later. On 8 October, an armed group affiliated to the Libyan National Army arrested four journalists, their driver and another woman in Hun, some 640 km south-east of Tripoli; they were questioned about their work and political affiliation, and were released two days later.

On 9 October, armed men beat a woman journalist and broke her camera and other equipment during her coverage of a protest in Tobruk.

49. On 28 August, in Tripoli, an event marking the launch of a collection of short stories and poems by Libyan authors was suspended following warnings that members of the Special Deterrence Force were moving in armoured vehicles towards the venue. On 30 August, the General Committee of Culture of the Government criticized the publication's alleged "pornographic" and "immoral" content, and called for legal action against those involved. The writers, organizers and publishers faced threats and intimidation on their social media pages. Several consequently went into hiding, while others fled the country. The Faqih centre, the venue that hosted the event, was shut down.

50. On 3 November, in another attack on public events in Tripoli, the Special Deterrence Force raided the Comic-Con exhibition and arrested dozens of participants and organizers. Most participants were released within 24 hours after their parents or guardians were summoned by the Special Deterrence Force for lecturing on the "immoral character" of the event. By 20 December, all organizers had been released. Some were reportedly tortured or otherwise ill-treated in custody.

51. UNSMIL/OHCHR also documented attacks on media outlets. In March, armed men from the Ras Hassan neighbourhood of Tripoli raided the offices of the Al-Nabaa television station, and vandalized the premises before setting them on fire. In April, unidentified assailants looted and set fire to the Awal radio station in Surman.

52. While article 26 (6) of the Libyan Political Agreement commits parties to support the functioning of the National Council for Civil Liberties and Human Rights, the country's national human rights institution has remained non-operational since armed conflict broke out in mid-2014. The term of the Council elapsed in late 2014 and had not been renewed by the House of Representatives, as required by the law establishing the Council.

Support

53. UNSMIL/OHCHR worked to directly support victims and their relatives by intervening with the Government and other counterparts on individual cases and issues of concern by briefing regularly the international community and engaging with United Nations human rights mechanisms.

54. In 2017, UNSMIL organized or supported at least three workshops for civil society and media workers on the documentation of human rights violations, including conflict-related sexual violence, and the use of international human rights mechanisms. The workshops were run jointly with the Cairo Institute for Human Rights Studies, Tunisian and Libyan organizations and United Nations partners.

55. While providing support, it was clear that media professionals, activists and human rights defenders at risk in Libya lacked financial and other essential support for protection. Further ongoing capacity-building for human rights defenders, particularly for women defenders, was also needed.

V. Administration of justice

A. Overview

56. In Libya, the criminal justice legal framework fails to comply with international human rights standards.[5] Efforts at law reform were hampered by the unstable environment, the dysfunction of legislative institutions, and political fragmentation. Members of the judiciary faced attacks and threats that severely limited their functioning; for instance, on 18 September 2017, an armed group physically assaulted a prosecutor at the Gharyan court complex, leaving the premises with defendants and court documents. While a number of courts, particularly in eastern Libya, reopened in 2017, the ability of the judiciary to process conflict-related and other politically sensitive cases remained limited. The Judicial Police - under the authority of the Ministry of Justice, with responsibility for, inter alia, managing prisons, enforcing court decisions, maintaining the security of courts and apprehending fugitives – also frequently cited security concerns as the reason for their failure to bring detainees to court.

57. The inability of the justice system to function effectively has led to widespread impunity, particularly for violations and abuses perpetrated by armed groups. UNSMIL/OHCHR is unaware of any prosecution of armed group members, including those affiliated to the State, for crimes related to abuses committed since 2011, including in cases where the State exercised effective control, and announced investigations, vowing to bring those responsible to justice (see paras. 22-30 above).

B. Libyan Political Agreement

58. Little progress was made in implementing the administration of justice and rule of law provisions of the Libyan Political Agreement, which requires that armed groups release or hand over to the judicial authorities persons held in custody without a legal basis; that judicial authorities bring those persons before the judiciary or release them; and that the competent judicial authorities provide effective protection. Implementation of the Agreement would help to address many concerns regarding impunity and abuses committed by armed groups.

59. The Government of National Accord exclusively grants the authority to arrest and detain to law enforcement bodies established by law.[6] In a positive development, the Government appointed a Minister of Justice, who assumed his functions in late March. In meetings held in June with UNSMIL, the Minister acknowledged the importance of tackling the issue of unlawful detention, and confirmed his commitment to address human rights concerns in the context of detention in compliance with international law. The Ministry's priorities for 2017 included transferring all facilities under the effective oversight of the Judicial Police and the judiciary, ending torture and other custodial abuses, and holding perpetrators accountable. The implementation of these objectives has been severely stalled to date.

---

[5] UNSMIL/OHCHR, Report on the trial of 37 former members of the Qhadafi regime (Case 630/2012), 21 February 2017, available from www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime_EN.pdf

[6] See articles 26 (2), (3) and (4) and 44.

C. Arbitrary detention, deprivation of liberty, torture and ill-treatment

60. Instances of arbitrary detention, unlawful deprivation of liberty, and torture and ill-treatment, in violation of applicable international human rights law, continued to be reported to UNSMIL/OHCHR. In April 2017, the Working Group on Arbitrary Detention found that the detention of seven men in eastern Libya for nearly three years was arbitrary, given the lack of any legal basis for their detention and the breaches of their right to a fair trial (see A/HRC/WGAD/2017/6).

61. UNSMIL/OHCHR found evidence that arbitrary detention,[7] unlawful deprivation of liberty, enforced disappearances, torture and ill-treatment were widespread. Victims included individuals targeted for their tribal or family identity or opinion, as well as migrants. Perpetrators were primarily armed groups, including those acting on behalf of the State.

62. In October, the Judicial Police estimated that some 6,400 men, women and children were currently being held in 26 official prisons.[8] Some 75 per cent were in pretrial detention, including thousands detained since the 2011 armed conflict, with no prospect of trial. While no official statistics were available, an additional 2,600 people were estimated to be held at the Mitiga detention facility run by the Special Deterrence Force, most without having appeared before judicial authorities. The number of detainees held in facilities run by the Ministry of Defence, the Ministry of the Interior or directly by armed groups remained unknown.

63. Armed groups detained individuals, often on the basis of their affiliations or simply to exchange them for other detainees. Most were held with no judicial process, and sometimes in contravention of release orders issued by judicial bodies. Detainees were often held incommunicado for prolonged periods of time, subjected to torture or ill-treatment, and coerced into giving confessions. At times, confessions were broadcast on television and used in criminal proceedings.

64. In 2017, UNSMIL/OHCHR documented patterns of torture, ill-treatment and inhuman prison conditions in a number of detention facilities, including the Gernada prison in Al-Baida, Al-Kuweifiya prison in Benghazi, Al-Jawiya and Tomina prisons in Misrata and the Mitiga and Abu Salim detention facilities in Tripoli. Patterns of torture included beatings, cigarette burns, electrocution, death threats, suspension in stress positions and confinement in small, suffocating spaces. UNSMIL/OHCHR continued to receive reports of deaths in custody. From January to October 2017, at least 35 bodies bearing signs of torture were brought to Tripoli hospitals. They included the body of a man in his fifties. In June, the man had been summoned for questioning by an armed group nominally under the oversight of the Ministry of the Interior. Four days later, he was found dead. According to the forensics report, examined by UNSMIL/OHCHR, the victim had been "subjected to beatings and torture before his death".

65. During 2017, UNSMIL/OHCHR visited the Ain Zara (A and B), Al-Jdeida and Al-Jawiya prisons under the Ministry of Justice, and the Central Security/Abu Salim detention facility, under the Ministry of the Interior. While conditions had improved in the Al-Jdeida and Ain Zara (B) prisons when compared with previous years, UNSMIL/OHCHR observed severe overcrowding and lack of access to basic necessities in Al-Jawiya, where women

[7] In the present report, the term "detention" is intended to reflect deprivation of liberty by either State officials or armed groups, given that armed groups remain in control of many facilities and that many armed groups were nominally brought under the purview of government ministries after 2011.

[8] Information provided to UNSMIL at a meeting with officials from the Ministry of Justice, on 16 November 2016.

were guarded by male prison guards. Despite repeated requests, UNSMIL was denied access to the Mitiga detention facility controlled by the Special Deterrence Force; it was able, however, to document human rights violations committed at the facility through interviews with relatives of inmates, witnesses, medical professionals and released persons, as well as forensics reports. Violations included prolonged arbitrary and incommunicado detention, torture, deaths in custody and summary executions. UNSMIL repeatedly raised concerns about these violations in official communications and meetings with Special Deterrence Force officials, the Office of the Prosecutor General, the Prime Minister, and the Minister of Justice and the Minister of the Interior. Little progress was made on implementing an agreement dating back to 2016 to allow the Office of the Prosecutor General access to detainees in Mitiga to process their cases in accordance with the law.

66. The numbers of individuals held for migration-related offences in centres run by the Department for Combating Illegal Migration generally fluctuated between 4,000 and 7,000, and rising to nearly 20,000 in late October following the transfer of thousands of migrants held by smugglers and traffickers in Sabratha into the custody of the Department. No registration system to record the movement of migrants in and out of detention existed. Armed groups, individuals, security forces and the Libyan Coast Guard brought migrants to detention centres with no legal process, judicial review or other oversight mechanism.

Support

67. UNSMIL/OHCHR organized four workshops and seminars in Libya and Tunisia on the judiciary, prison management and international human rights mechanisms for judicial police officers, members of the judiciary and other counterparts. On 13 and 14 September, UNSMIL, in coordination with the United Nations Development Programme (UNDP), facilitated a workshop on addressing arbitrary and prolonged detention in Libya within a national reconciliation framework. The workshop was attended by 40 representatives of municipalities, civil society, including academics and legal experts, and concluded with the adoption of a set of recommendations addressed to the legislative authority, the Government and municipalities, as well as judicial authorities and detention facilities.

68. UNSMIL also conducted 15 visits to judicial police prisons in Misrata, Tobruk and Tripoli, and two visits to detention facilities under the Ministry of the Interior in Tripoli. It provided advice and advocated with the Judicial Police and armed groups in Tripoli on the process of moving detainees from unofficial places of detention to official prisons. It carried out prison situation assessments and capacity-building activities with prison directors. It worked on the implementation of the human rights due diligence policy on United Nations support to non-United Nations security forces. In September, the United Nations human rights due diligence policy task force in Libya adopted a risk assessment committing United Nations agencies involved in supporting the Coast Guard to extensive monitoring and advocacy measures to mitigate the risks of human rights violations.

69. UNSMIL/OHCHR advocated for the Presidency Council and the Ministry of Justice to implement the justice and rule of law provisions of the Libyan Political Agreement. It also advocated for the international community to screen recipients of technical assistance and capacity-building programmes.

VI. Transitional justice

70. Little progress was made in the implementation of provisions of the Libyan Political Agreement that committed parties to applying law No. 29 of 2013 on transitional justice. In 2017, the Presidency Council issued two decrees, establishing a preparatory committee tasked with organizing a dialogue process to develop a mandate for a future national

reconciliation commission, and a reparations fund for harm suffered during the 2011 and 2014 armed conflicts.

71. On 21 February, UNSMIL and OHCHR jointly issued a report on the trial of 37 former members of the Qadhafi regime (Case 630/2012),[8] in which they found numerous breaches of fair trial standards in the conduct of the proceedings, including to the rights to a public trial, to adequate time and facilities to prepare and present a defence. The verdict issued on 28 July 2015, sentencing 32 defendants to death or to prison terms, was still under review by the cassation chamber of the Supreme Court at the end of 2017. In May, several defendants in the case were transferred from Al-Hadba prison to an unknown location. Their exact whereabouts and legal status remained unclear, despite UNSMIL/OHCHR requests for clarification and access to prisoners addressed to the Minister of Justice and the Office of the Prosecutor General.

72. In its resolution 1970 (2011), the Security Council referred the situation of Libya to the Prosecutor of the International Criminal Court, giving the Court jurisdiction over crimes committed in Libya since 2011. On 24 April, the Court unsealed an arrest warrant for Khaled Al-Tohamy for crimes against humanity and war crimes, including murder and persecution committed during the 2011 armed conflict.[9] Media reported the release from detention in Zintan, on 16 June, of Saif al-Islam Qadhafi, who was subject to an arrest warrant issued by the Court in 2011. On 15 August, the Pre-Trial Chamber I of the Court issued a warrant for the arrest of Mahmoud Al-Werfalli for the war crime of murder (see para. 27 above).[10] The three men remained at large, amid reports that Al-Werfalli was involved in additional crimes under international law following the issuance of a warrant for his arrest, despite the announcement by the Libyan National Army that he was in custody and under investigation. UNSMIL/OHCHR called upon all parties to cooperate with the Court and to surrender the suspects to it.

73. On 20 June, the Presidency Council ratified an agreement reached by the Misrata/Tawargha dialogue committee in August 2016 and amended in March 2017. The agreement outlined a programme of compensation for victims of the 2011 conflict and the return of some 40,000 displaced Tawerghans. On 26 December, the Presidency Council announced that Tawerghans could begin to return home as of 1 February 2018, and instructed relevant national security and service institutions to make due preparations. UNSMIL urged the Presidency Council and other stakeholders to implement the agreement in full compliance with international standards, including to remove any conditionality on the return of internally displaced persons, to ensure full transparency and oversight for reparations and other payments, and to address truth and justice issues through a national programme. On 18 May, an agreement was reached between the Mashashiya and Zintan communities on the return of persons displaced since the 2011 armed conflict to their homes, and on the establishment of mechanisms to address the issues of reparation and missing persons.

Support

74. UNSMIL/OHCHR continued to engage with the Office of the Prosecutor General and other officials on issues relating to fair trial standards, criminal law reform and accountability, and raised a number of individual cases of concern and patterns of abuse.

---

[9] International Criminal Court, "Situation in Libya: ICC Pre-Trial Chamber I unseals a warrant of arrest for Al-Tuhamy Mohamed Khaled charged with war crimes and crimes against humanity", press release, 24 April 2017.

[10] International Criminal Court, *The Prosecutor v. Mahmoud Moustafa Busayf Al-Werfalli*, 15 August 2017.

75. UNSMIL/OHCHR continued to support the Misrata/Tawergha dialogue committee in the implementation of its agreement on compensation and returns, in accordance with international standards. On 19 September, UNSMIL and UNDP organized a meeting in Tripoli with members of the dialogue committee and government officials, including the Deputy Prime Minister and the Minister for Internally Displaced Persons, to discuss implementation mechanisms. On 25 and 26 October, UNSMIL and UNDP also organized a consultation workshop for civil society representatives on the implementation of the agreement in accordance with international standards.

76. In response to requests by members of the Zintan and Mashashiya communities for support in their reconciliation process, UNSMIL and UNDP organized meetings with representatives of both communities, addressing issues of safe and dignified return for those displaced, truth-seeking and justice, security and the resolution of historical disputes, including those linked to land ownership.

VII. Conclusions and recommendations

77. Armed groups, including those acting on behalf of the State, continued to be primarily responsible for grave human rights violations and abuses in Libya. State institutions remained weak and often were unable or, in some cases, unwilling to ensure accountability for human rights violations or abuses or to end impunity.

78. Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, the High Commissioner appeals to all parties to the conflict to cease all hostilities and to engage in a meaningful, inclusive political dialogue built on ensuring the respect for human rights and the rule of law.

79. The High Commissioner recommends that all parties to the conflict, including those with de facto control of territory in Libya:

(a) Desist immediately from all acts constituting violations of international humanitarian law and violations or abuses of international human rights law, including those constituting crimes under international law; in particular, they should cease immediately all attacks on civilians and comply fully with all applicable principles of international humanitarian law, notably the principles of distinction, proportionality and precaution, and take the steps necessary to end summary executions and other unlawful killings and to hold accountable those responsible;

(b) Declare that such acts will not be tolerated, and remove those suspected of such acts from active duty, pending investigation and prosecution by responsible State authorities in accordance with the law;

(c) Release immediately and unconditionally all those detained arbitrarily and unlawfully, and transfer all other persons deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice;

(d) Facilitate the unfettered and unhindered access to detainees and places of detention by United Nations entities and other organizations concerned with humanitarian assistance and protection;

(e) Take concrete steps to eliminate torture and ill-treatment, including rape and all forms of sexual violence, notably those acts committed by individuals operating in support of the State or as its agents.

80. The High Commissioner recommends that the Government of Libya:

(a) Address the situation of detainees and all those deprived of liberty by ensuring that the State has exclusive control of all detention facilities, and that all cases are processed promptly and in accordance with the law, by independent judicial bodies, and by ensuring the full respect for due process and fair trial standards, in accordance with Libyan law and international human rights law;

(b) Begin a process of disarmament, demobilization and reintegration of members of armed groups, and institute a vetting programme, compliant with due process standards, to remove or to prevent the recruitment into the State security forces of individuals concerning whom there are reasonable grounds to believe that they have been involved in violations of international humanitarian law, or violations or abuses of international human rights law;

(c) Conduct prompt, independent, impartial, full and transparent investigations into serious violations of international humanitarian law, and violations or abuses of international human rights law, ensuring the appropriate care and protection of victims, as well as accountability for those responsible, in accordance with the law and in full compliance with due process and fair trial standards;

(d) Ensure the right to due process of detainees is fully respected and protected, including the right to access legal counsel and to receive visits by family members;

(e) Transfer women detainees to facilities with sufficient female guards and other trained personnel, and establish gender-appropriate health care and other services for women and accompanying children;

(f) Extend full cooperation to the International Criminal Court by facilitating unhindered access to relevant locations in Libya, witnesses and information in carrying out its investigations and ensuring full compliance with its rulings;

(g) Address urgently the situation of migrants to ensure that the rights of all individuals, regardless of their status, are protected and respected, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure, and immediately implementing alternatives to detention;

(h) Facilitate the voluntary, safe and dignified return of persons who are currently internally displaced, including the Tawergha community.

81. The High Commissioner recommends that the international community:

(a) Provide the International Criminal Court with the resources necessary to investigate, prosecute and try the alleged crimes under its jurisdiction that may have been perpetrated in Libya since 2011;

(b) Assist the Government of Libya to release all those detained arbitrarily and others unlawfully deprived of their liberty, and to transfer all those lawfully deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice;

(c) Provide the Government with technical assistance and other support to reform the State's criminal justice system, including the penitentiary system, in accordance with international norms and standards;

(d) Consider supporting programmes of legal aid for those detained and at particular risk of grave human rights violations;

(e) Apply a due diligence framework to programmes that support the security forces, and stringent screening procedures to recipients of technical and other

assistance to ensure that they are not responsible for violations of international humanitarian law or violations or abuses of international human rights law or international crimes;

(f) Offer effective protection and assistance to victims of human rights violations, including torture, by ensuring adequate financial and other support to organizations working on psychological and physical rehabilitation and counselling;

(g) Assist the Government of Libya in ensuring the rights of migrants are fully respected and protected, including by providing technical assistance and capacity-building to government institutions on legislative and regulatory reforms, in compliance with the United Nations human rights due diligence policy;

(h) Ensure that any cooperation with the Government of Libya in relation to migration is conditional on the Government taking concrete steps to address human right violations and abuses committed against migrants;

(i) Ensure respect for the principle of non refoulement, in accordance with international law.

82. The High Commissioner recommends that the Human Rights Council remain seized of the progress made towards accountability and the situation of human rights in Libya.